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Base Realignment and Closure Division

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SUBJECT: Fort Wingate Depot Activity RCRA Facility Investigation Work Plan

The United States Army Legal Services Agency, Environmental Law Division has reviewed the letter of August 19, 2011 from the New Mexico Environment Department ("NMED") regarding the Resource Conservation and Recovery Act ("RCRA") Facility Investigation Work Plan at Fort Wingate Depot Activity ("FWDA"). In that letter, NMED continues to insist that the Army must sample the inside of munitions storage igloos in Parcels 4a, 6, and 22 under the terms of the Army's RCRA hazardous waste permit. Because such a requirement is outside the scope of RCRA, the Army cannot sample the inside of these igloos.

NMED states that the Army must sample inside of the igloos consistent with the corrective action portion of FWDA's RCRA permit. The permit does not explicitly state that RCRA corrective action authority extends to the interior of buildings, nor could it, because RCRA corrective action is limited to releases of hazardous wastes "into the environment." 50 FR 28702, 28713 (July 15, 1985). RCRA does not define "environment" but the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") defines it as "navigable waters ... and any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air." 42 U.S.C. §9601(8); see also 50 FR 28713 (discussing the Environmental Protection Agency's belief that the definition of a release under RCRA should be consistent with CERCLA). The interior of a building is not the environment; therefore, NMED has no corrective action authority to require sampling in the interior of buildings.

The point of contact is Mark Patterson at mark.c.patterson@us.army.mil or (330) 358-7312.

Sincerely,



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Chief, Operational Army and Medical Branch

cc:

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